

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #9	CCRB Case #: 201809730	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/13/2018 8:47 PM	Location of Incident: 1994 Troy Avenue	Precinct: 63	18 Mo. SOL 5/13/2020	EO SOL 12/28/2020	
Date/Time CV Reported Tue, 11/13/2018 9:22 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/21/2018 10:13 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Haviland	29414	934997	063 PCT
2. POM John Brennan	12838	960275	063 PCT
3. POM Leonardo Viera	26433	946369	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mario Guerrero	06810	951796	063 PCT
2. POM Sun Rah	16371	961141	063 PCT
3. POM Ardit Ymeri	19585	959391	063 PCT
4. POM John Triano	31798	953494	063 PCT
5. POM Resner Cadet	14050	952525	063 PCT
6. POM Anthony Cosenza	08839	960394	063 PCT
7. POF Tricia Navarrocarrallo	19673	958973	063 PCT
8. POM Reginald Garner	19795	951761	063 PCT
9. POF Katherine Wirth	04895	963811	063 PCT
10. POM Jonathon Perez	19449	964209	063 PCT
11. POF Melissa Paschal	22264	940549	063 PCT
12. POF Cynthia Alonzo	00152	963370	063 PCT
13. POM Gregory Bacich	20689	962934	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Leonardo Viera	Abuse: Police Officer Leonardo Viera threatened § 87(2)(b) with the use of force.	
B.POM James Haviland	Off. Language: Police Officer James Haviland made remarks to § 87(2)(b) based upon race.	
C.POM James Haviland	Discourtesy: Police Officer James Haviland spoke discourteously to § 87(2)(b)	
D.POM John Brennan	Discourtesy: Police Officer John Brennan spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Leonardo Viera	Discourtesy: Police Officer Leonardo Viera spoke discourteously to § 87(2)(b)	
F.POM Leonardo Viera	Discourtesy: Police Officer Leonardo Viera spoke discourteously to § 87(2)(b)	

Case Summary

On November 13, 2018, this complaint was self-reported by the NYPD's Police Officer Angeline Rodriguez, of the OCD Operations Unit; which, was then received at the CCRB on November 21, 2018, under log number 18-45143.

On February 25, 2019, § 87(2)(b)'s attorney, § 87(2)(b) of Legal Aid, requested that this case be closed until the completion of his criminal matter. § 87(2)(g)

On August 24, 2020, this case was reassigned from Investigator Leilani Rhodes to Supervising Investigator Wassim Abedrabbo.

On November 13, 2018, at approximately 8:47 p.m., Police Officer John Brennan and Police Officer Mario Guerrero, both of the 63rd Precinct, approached § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) in front of 1994 Troy Avenue in Brooklyn.

After arresting and placing § 87(2)(b) in a marked RMP, Police Officer Leonardo Viera, also of the 63rd Precinct at the time of this incident, threatened to Taser § 87(2)(b) (**Allegation A: Abuse of Authority – Threat of Force**, § 87(2)(g))

§ 87(2)(b) who had a gun on his possession, shot himself in the leg. While attempting to subdue § 87(2)(b) PO Haviland called § 87(2)(b) a, "Fucking nigger" (**Allegation B: Offensive Language – Race**, § 87(2)(g)). After apprehending and gaining control of § 87(2)(b) PO Haviland, PO Brennan, and PO Viera also spoke discourteously to him (**Allegations C, D, and E: Discourtesy – Word**, § 87(2)(g))

After § 87(2)(b) locked herself in § 87(2)(b)'s vehicle, PO Viera spoke used profanity while speaking to her (**Allegation F: Discourtesy – Word**, § 87(2)(g))

Ultimately, officers recovered a gun that was on § 87(2)(b)'s person.

§ 87(2)(b) and § 87(2)(b) were all arrested. § 87(2)(b) and § 87(2)(b) were taken to the stationhouse and § 87(2)(b) was immediately removed to a hospital.

Body-Worn Camera (BWC) footage was obtained in relation to this investigation (**Board Review 01**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Leonardo Viera threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) was involved in a dispute with an ex-partner, who alleged to NYPD officers that he menaced and harassed her. It is also undisputed that the officers approached and arrested him regarding those allegations (**Board Review 03**).

PO Viera stated that he threatened to taser § 87(2)(b) while he was rear-handcuffed and placed in the back of a marked RMP because § 87(2)(b) was yelling and kicking the inside of the RMP windows (**Board Review 08**).

The 1:00 VLC-timestamp, of PO Viera's second BWC video, confirms that § 87(2)(b) was rear-handcuffed and placed inside the back of a marked RMP when PO Viera made the threat (**Board Review 09**). PO Viera is heard making the threat at 2:17.

Patrol Guide Procedure 221-08 (**Board Review 10**). A CEW should never be used in cartridge or drive-stun mode on a rear-cuffed prisoner.

Given that § 87(2)(b) was rear-cuffed, PO Viera would not have been justified in tasing him while he was in the back seat of the RMP, and therefore should not have threatened to do so.

§ 87(2)(g)

Allegation (B) Offensive Language: Police Officer James Haviland made remarks to § 87(2)(b) based upon race.

It is undisputed that PO Haviland called § 87(2)(b) a “fucking nigger.” (PO Haviland’s use of the word “fucking” is addressed in Allegation C.)

When asked why he made the offensive remark to § 87(2)(b) PO Haviland stated that he did not have a reason to use the word (**Board Review 12**).

Patrol Guide Procedure 203-10 (Board Review 13). Officers are prohibited from using remarks discourteous or disrespectful to a person’s race.

PO Haviland made a discourteous and disrespectful remark to § 87(2)(b) based on his race.

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer James Haviland spoke discourteously to § 87(2)(b)

Allegation (D) Discourtesy: Police Officer John Brennan spoke discourteously to § 87(2)(b)

Allegation (E) Discourtesy: Police Officer Leonardo Viera spoke discourteously to § 87(2)(b)

Allegation (F) Discourtesy: Police Officer Leonardo Viera spoke discourteously to § 87(2)(b)

It is undisputed that after § 87(2)(b) shot himself in the leg, was placed in handcuffs, and the gun was found on him, PO Haviland, PO Brennan, and PO Viera used profanities while speaking to him (**Board Review 01**). It is also undisputed that PO Viera spoke discourteously to § 87(2)(b)

and § 87(2)(b)

As noted in Allegation B above, it is undisputed that PO Haviland called § 87(2)(b) a “fucking nigger.”

Between 3:21 and 3:30 in PO Haviland’s BWC, PO Haviland calls § 87(2)(b) a “fucking moron” and “dumb fucking idiot” (**Board Review 11**). PO Haviland’s BWC further captures him call § 87(2)(b) a “dumb fuck” at 5:30.

PO Brennan’s BWC depicts him call § 87(2)(b) a “fucking jerkoff” at 21:55 and 22:33 (**Board Review 05**). Between 22:11 and 22:17, during discussion about what happened, PO Brennan asks § 87(2)(b) “You come at us like that with a gun, are you fucking stupid?” and, “So you’re going to fire off a fucking shot?” At 22:24, he says, “You could have got yourself fucking shot.” At 22:35, PO Brennan says, “If you have another fucking weapon, I swear to god.” At 22:43, he then says, “Over a fucking fence?” At 23:28, PO Brennan asks, “Asshole, did you get fucking shot in the leg?” At 23:55, PO Brennan calls § 87(2)(b) an “asshole.” Finally, at 24:03, PO Brennan calls § 87(2)(b) a “stupid motherfucker.”

At 24:05 of PO Brennan’s BWC, PO Viera calls § 87(2)(b) a “fucking idiot” (**Board Review 05**).

PO Viera’s BWC depicts him call § 87(2)(b) a “fucking idiot” once and a “stupid fuck” twice between 4:11 and 4:20 (**Board Review 09**). After § 87(2)(b) gets into § 87(2)(b)’s vehicle and locks the door of the vehicle, between 4:20 and 4:36, PO Viera says, “Get the fuck out the car. Break the fucking window. Get the fuck out the car. Smash that fucking window! Get

out. Get the fuck out!"

PO Haviland, PO Brennan, and PO Viera all acknowledged that they used profanity after § 87(2)(b) shot himself and stated that the incident was stressful and chaotic (**Board Review 12**) (**Board Review 02**) (**Board Review 08**).

NYPD Disciplinary Case No. 2015-15012 (**Board Review 14**). A police officer is justified in using profanity when the statement(s) are used for the purpose of gaining control or communicating instruction during a dynamic situation. However, the same officer is unjustified in using profanity when the situation is under control and the statements serve no legitimate purpose but to belittle a request by the civilian.

The profanities used by PO Haviland and PO Brennan came after § 87(2)(b) was placed in handcuffs and the gun was found on his person, and they were not used while giving an instruction in attempt to gain compliance. This also stands true for when PO Viera called § 87(2)(b) a “fucking idiot” and “stupid fuck.” Given that the statements did not serve a purpose beyond the belittlement of § 87(2)(b) the statements were discourteous. § 87(2)(g)

PO Viera’s use of profanity directed at § 87(2)(b) was used while instructing her to get out of the vehicle that she entered and locked. For that reason, it was determined that there was a law enforcement purpose for using the profanity and the profanity was not discourteous.

§ 87(2)(g)

Allegations Not Pleaded

Allegations of Abuse of Authority – Stop, Force – Physical Force and Nightstick as Club, and Abuse of Authority – Property damage were not pleaded. As approved by ED Jon Darche, the full investigation conducted was based on BWC footage obtained by the investigation and without civilian statements (**Board Review 18**). For that reason, the aforementioned allegations could not be fully and thoroughly investigated strictly on what was depicted in the BWC.

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 04**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 06**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 07**).
- PO Brennan has been a member of service for four years and has been a subject in two other CCRB complaints and six other allegations, of which two allegations were substantiated (see officer history):
 - 201902222 involved substantiated allegations of Force – Chokehold and Force – Restricted Breathing against PO Brennan. The Board recommended charges and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Guerrero has been a member of service for eight years and has been a subject in five other CCRB complaints and seven allegations, none of which were substantiated. PO § 87(2)(g)
- PO Haviland has been a member of service for 16 years and has been a subject in nine

other CCRB complaints and 15 other allegations, of which two allegations were substantiated (see officer history):

- 201405853 involved a substantiated allegation of Abuse of Authority – Vehicle Search against PO Haviland. The Board recommended Command Discipline and the NYPD imposed instructions.
- 201708493 involved a substantiated allegation of Abuse of Authority – Threat re: remove to hospital against PO Haviland. The Board recommended Command Discipline A and the NYPD imposed instructions.
- The investigation determined that there is a pattern in PO Haviland’s MOS history. In CCRB case numbers 200710278 and 201205713, it was alleged that he used the offensive term “nigger” in reference to black males. The cases were closed as Complainant Uncooperative and Unsubstantiated, respectively.
- PO Viera has been a member of service for 12 years and has been a subject in eight other CCRB complaints and 23 other allegations, of which three allegations were substantiated (see officer history):
 - 201708493 involved substantiated allegations of Force – Physical Force, Discourtesy – Word, and Offensive Language – Physical Disability against PO Haviland. The Board recommended charges and the NYPD retained the case and imposed instructions.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of October 22, 2020, the Notice of Claim inquiry with the NYC Comptroller’s office is still pending.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Squad No.: 09

Investigator:	<u>Wassim Abedrabbo</u> Signature	<u>SI Wassim Abedrabbo</u> Print Title & Name	<u>October 26, 2020</u> Date
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Squad Leader:	<u>Monique West</u> Signature	<u>IM Monique West</u> Print Title & Name	<u>10/26/2020</u> Date
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Reviewer:	Signature	Print Title & Name	Date
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